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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2016-2017

2151018

H.B.

v.

Mobile County Department of Human Resources

Appeal from Mobile Juvenile Court
(JU-08-1785.03)

MOORE, Judge.

H.B. ("the mother") appeals from a judgment entered by the Mobile Juvenile Court ("the juvenile court") terminating her parental rights to H.M.P. ("the child"). We reverse the juvenile court's judgment.

Procedural History

On February 12, 2016, the Mobile County Department of Human Resources ("DHR") filed a petition to terminate the parental rights of the mother and P.P. ("the father").[1] After a trial, the juvenile court entered a judgment terminating the parental rights of the mother and the father to the child. In its judgment, the juvenile court determined the child to be dependent and found, in pertinent part:

> "Since obtaining custody of said child, [DHR] has offered services to the mother, and made all reasonable efforts to promote reunification. Said unification efforts failed due to the failure of the mother to accept services, or to amend her circumstances for the best interests of the child."

The juvenile court found that no other viable alternatives existed and that "termination of [the] parental rights of the [mother] is in the best interests of the child to promote permanency."

Facts

The evidence in the record indicates that the mother was diagnosed at age 22 with psychosis schizophrenia after suffering a mental-health breakdown following the death of her

[1]The father failed to appear before the juvenile court, and he has not appealed. Therefore, we will not discuss the petition or the judgment insofar as they relate to the father.

grandmother. The mother suspended taking her medication for that illness when she became pregnant with the child, who was born on January 30, 2007. She resumed taking the medication two to three months later, but at a different dose than as prescribed.

In 2008, when the child was approximately 18 months old, DHR removed the child from the one-bedroom apartment the mother shared with her mother ("the maternal grandmother") and the child. The mother and the maternal grandmother testified to a dispute between the mother and a neighbor, which, they claimed, had possibly led to the neighbor's reporting the mother for failing to properly supervise the child. The mother testified that, on that occasion, she was on the front porch of the apartment while the child was inside the apartment in a high chair within the mother's sight. The mother said that she became stressed when DHR arrived to take the child away. When the child was removed, the mother said, she asked for an ambulance, which took the mother to a local hospital. Natasha Dysert, a DHR worker who was "not on the scene that day," testified that DHR had been called due to the mother's erratic behavior and that, upon arrival at the

mother's apartment, DHR workers discovered the child unattended in the doorway of the apartment; according to Dysert, drug paraphernalia had also been found inside the apartment. At that time, the mother, who, according to Dysert, was in the parking lot, reported that she had been shot in the head and that people were trying to run over her with a car.

The mother testified that she had been hospitalized following the 2008 incident. Dysert testified that, at the time of that incident, the mother was off the medication she had been prescribed for her mental illness but that changes in her medication had been made by the doctors who treated her. The mother testified that the doctors had stabilized her medication. Dysert testified that the mother had complied with DHR's family-reunification plan, which included a psychiatric evaluation, and the child was returned to the custody of the mother in 2010.

The child resumed living with the mother and the maternal grandmother in the same one-bedroom apartment. When the family planned to move from those premises in 2012, the management inspected the apartment and found 28 or more cats

and a dog living there. DHR investigated and determined that the apartment was unsanitary and unsuitable for the child, so the child was again removed from the custody of the mother. The maternal grandmother testified that the mother was overly compassionate to animals and had regularly taken in strays. Charlene Clemons, the DHR social worker who oversaw the 2012 case, testified that DHR had established goals for the mother, including obtaining alternative housing and maintaining her mental health. According to Clemons, the mother had met those goals and the child was returned to the custody of the mother in December 2013 subject to DHR's supervision for the following six months. At that time, the mother and the maternal grandmother were residing in a three-bedroom house that the maternal grandmother had begun renting in 2012.

On August 31, 2015, DHR was called to the family's house by police officers who were serving an arrest warrant on the mother for theft of property. Natasha Reyes, the DHR social worker who responded to that call, testified that, when she arrived at the house, the house did not have running water or electricity and was in an unsanitary condition due to trash, cat waste, and bugs. The mother testified that the electric

and water services to the house had been cut off for approximately six months after the maternal grandmother had lost her employment and could not afford to pay the bills. DHR removed the child from the mother's custody and placed the child into foster care. DHR requested that the mother undergo a psychological evaluation, attend parenting classes, and work with "FOCUS" in-home services, which the mother initially declined; the mother did, however, visit with the child.

On January 19, 2016, DHR changed its permanency plan from reunification with the mother to adoption. Sarah Jernigan, a DHR social worker, took over the case on March 8, 2016. Jernigan testified that the mother had begun cooperating with DHR's requests by undergoing a psychological evaluation in May 2016 and by participating in "Tools of Choice" in-home services. The mother testified that she had completed parenting classes. Jernigan testified that she had allowed the child to visit with the mother in the rental house in which the mother and the maternal grandmother resided after concluding that the house was suitable for the child. The maternal grandmother testified that she had resumed gainful employment and that she had paid all the necessary fees to

restore electric and water services to the house. Jernigan testified that, at the time of the trial, the mother had made progress and was nearing completion of all of the goals DHR had set for her. The mother testified that she was given two years' probation on the theft-of-property criminal charge and that she was ready, willing, and able to regain custody of the child.

There was no evidence of harm to the child, which the mother denied and which DHR did not attempt to prove. The mother testified that she had taken prenatal vitamins when she was pregnant with the child and that the child had been born "in perfect health." Dysert testified that, in 2008, the child had been found in a high chair, which, she admitted, was an appropriate place for the child to be. The mother testified that the child was never in danger. DHR discovered that the child had not yet been immunized, but no one testified that the child's immunization treatment was overdue. The mother testified that she and the maternal grandmother had paid to have the child immunized during the time the child was in DHR's custody between 2008 and 2010. The mother also

testified that she had attended all of the child's medical appointments during that period.

Although DHR removed the child due to the conditions of the apartment in 2012, no witness testified that the health of the child had been adversely affected by those conditions. The mother testified that the child had slept in the bedroom "away from the cats," which, she testified, had stayed in the front room of the apartment. The mother testified that after the child was returned to her custody, the mother and the maternal grandmother had cared for the child by feeding, clothing, entertaining, and educating the child. The mother and the maternal grandmother celebrated birthdays and other holidays with the child by giving her toys and presents. No one from the child's school ever questioned the care the child received.

Reyes testified that when she removed the child from the mother's custody in 2015, the child was in good physical condition and was clean. The mother testified that the child was never ill or malnourished, but was at a healthy weight. Although the family's house was without electric service and running water for a period, the child had informed Reyes that,

during that time, she had been eating out and had also eaten frozen dinners that had thawed to room temperature. The maternal grandmother and the mother testified that they had improvised by using gallons of water to flush the toilet as well as occasionally staying at a motel to bathe. They both testified that, despite the lack of electricity and running water, the child had been kept well-groomed, had never missed a meal, had always had shelter, had always attended school on time, and had received help with her homework. According to the maternal grandmother, the child had earned good grades while in her and the mother's care, maintaining a "B" average. Jernigan testified that the child is bonded with the mother and the maternal grandmother and that they display love for one another.

The mother was 37 years old at the time of the trial. She has been regularly taking two Haldol tablets per day for her mental illness, as well as undergoing therapy once a year at Altapointe, a mental-health facility. She also visits Altapointe every three months for the purpose of monitoring her medication. Veronica Davis, a licensed professional counselor who was called as an expert witness by DHR,

testified that the mother was "stabilized" at the meeting they had had on May 18, 2016. The mother testified that she had not had a mental-health crisis since 2008, when DHR first removed the child from her custody. The mother testified that her mental illness does not impair her ability to care for the child. The maternal grandmother and the mother both testified that the mother could care for the child independently.

Issue

On appeal, the mother argues that the evidence does not support the juvenile court's findings that she failed to successfully rehabilitate herself and adjust her circumstances to meet the needs of the child or that termination of her parental rights serves the best interests of the child.

Standard of Review

A judgment terminating parental rights must be supported by clear and convincing evidence, which is "'"[e]vidence that, when weighed against evidence in opposition, will produce in the mind of the trier of fact a firm conviction as to each essential element of the claim and a high probability as to the correctness of the conclusion."'" C.O. v. Jefferson Cty. Dep't of Human Res., 206 So. 3d 621, 627 (Ala. Civ. App. 2016)

(quoting L.M. v. D.D.F., 840 So. 2d 171, 179 (Ala. Civ. App. 2002), quoting in turn Ala. Code 1975, § 6-11-20(b)(4)).

> "'[T]he evidence necessary for appellate affirmance of a judgment based on a factual finding in the context of a case in which the ultimate standard for a factual decision by the trial court is clear and convincing evidence is evidence that a fact-finder reasonably could find to clearly and convincingly ... establish the fact sought to be proved.'
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> "KGS Steel[, Inc. v. McInish,] 47 So. 3d [749] at 761 [(Ala. Civ. App. 2006)].
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> "To analogize the test set out ... by Judge Prettyman [in Curley v. United States, 160 F.2d 229, 232-33 (D.C. Cir. 1947),] for trial courts ruling on motions for a summary judgment in civil cases to which a clear-and-convincing-evidence standard of proof applies, 'the judge must view the evidence presented through the prism of the substantive evidentiary burden'; thus, the appellate court must also look through a prism to determine whether there was substantial evidence before the trial court to support a factual finding, based upon the trial court's weighing of the evidence, that would 'produce in the mind [of the trial court] a firm conviction as to each element of the claim and a high probability as to the correctness of the conclusion.'"

Ex parte McInish, 47 So. 3d 767, 778 (Ala. 2008). This court does not reweigh the evidence but, rather, determines whether the findings of fact made by the juvenile court are supported by evidence that the juvenile court could have found to be

clear and convincing. See Ex parte T.V., 971 So. 2d 1, 9 (Ala. 2007). When those findings rest on ore tenus evidence, this court presumes their correctness. Id. We review the legal conclusions to be drawn from the evidence without a presumption of correctness. J.W. v. C.B., 68 So. 3d 878, 879 (Ala. Civ. App. 2011).

Discussion

Section 12-15-319, Ala. Code 1975, provides, in pertinent part:

> "(a) If the juvenile court finds from clear and convincing evidence, competent, material, and relevant in nature, that the parent[] of a child [is] unable or unwilling to discharge [his or her] responsibilities to and for the child, or that the conduct or condition of the parent[] renders [him or her] unable to properly care for the child and that the conduct or condition is unlikely to change in the foreseeable future, it may terminate the parental rights of the parent[]."

In order to terminate parental rights under § 12-15-319, a juvenile court must be clearly convinced from the evidence that the parent cannot or will not provide adequate care for the child. See S.U. v. Madison Cty. Dep't of Human Res., 91 So. 3d 716, 720 (Ala. Civ. App. 2012).

In deciding whether a parent is unable to properly parent a child, the juvenile court must consider, among other

factors, "[t]hat reasonable efforts by the Department of Human Resources or licensed public or private child care agencies leading toward the rehabilitation of the parents have failed" and the "[l]ack of effort by the parent to adjust his or her circumstances to meet the needs of the child in accordance with agreements reached, including agreements reached with local departments of human resources or licensed child-placing agencies, in an administrative review or a judicial review." § 12-15-319(a)(7) & (12). In its judgment, the juvenile court found that DHR's efforts at rehabilitation had failed and that the mother had not adjusted her circumstances to meet the needs of the child. The record does not contain clear and convincing evidence to sustain those findings.

Once DHR places a child in foster care, it has an immediate duty to use reasonable efforts to reunite the family, absent aggravating circumstances. See Ala. Code 1975, § 12-15-312. That duty requires DHR to identify the circumstances that led to removal of the child, to develop a plan to ameliorate those circumstances, and to use reasonable efforts to achieve that plan. See Montgomery Cty. Dep't of Human Res. v. A.S.N., 206 So. 3d 661, 672 (Ala. Civ. App.

2016) (citing H.H. v. Baldwin Cty. Dep't of Human Res., 989 So. 2d 1094, 1105 (Ala. Civ. App. 2007) (opinion on return to remand) (authored by Moore, J., with two judges concurring in the result)).

The mother argues that DHR removed the child solely because of the lack of electric service and running water at the family's house. Cf. M.G. v. Etowah Cty. Dep't of Human Res., 26 So. 3d 436, 444 (Ala. Civ. App. 2009) (indicating that the mere absence of utilities would not be sufficient to terminate parental rights). Actually, Reyes testified that DHR had removed the child from the custody of the mother "[d]ue to inadequate shelter and [the mother's] being arrested for stealing ...."[2] By "inadequate shelter," Reyes explained that she meant not only the absence of electric service and running water, but also the "deplorable" unsanitary condition of the house. Although Alabama law has not been clear on this point, other states have recognized that a child can be

[2]DHR also presented evidence regarding the mother's mental illness. However, the undisputed evidence indicates that the mother was stable at the time of the trial. Furthermore, the juvenile court did not find that the mother's mental illness prevented her from properly caring for the child, although the juvenile court was required to consider that question. See Ala. Code 1975, § 12-15-319(a)(2).

permanently removed from the custody of a parent who allows chronic, recurring unsanitary conditions to endanger the health of the child. See, e.g., In re J.W., 921 P.2d 604 (Alaska 1996); Browning v. Arkansas Dep't of Human Res., 85 Ark. App. 495, 157 S.W.3d 540 (2004); In re Paul E., 39 Cal. App. 4th 996, 46 Cal. Rptr. 2d 289 (1995); In re A.H., 842 A.2d 674 (D.C. 2004); Idaho Dep't of Health & Welfare v. Doe, 149 Idaho 653, 239 P.3d 451 (Ct. App. 2010); In re N.M.W., 461 N.W.2d 478 (Iowa Ct. App. 1990); In re Interest of E.R., 230 Neb. 646, 651, 432 N.W.2d 834, 838 (1988); In re Lillian R., 196 A.D.2d 503, 600 N.Y.S.2d 756 (1993); and In re Interest of J.R., 501 S.W.3d 738 (Tex. App. 2016). A fair reading of the record indicates that DHR removed the child primarily for that reason.

In her brief to this court, the mother correctly notes that DHR did not assist her with restoring the utilities, which the maternal grandmother independently accomplished, but the mother overlooks that DHR did schedule classes and in-home services designed to improve the mother's housekeeping abilities, the main obstacle to family reunification. Even after the mother initially refused those services, DHR

continued to offer them to the mother. Thus, we conclude that DHR used reasonable efforts to reunite the family in this case.

The real issue in this case is not whether DHR used reasonable efforts, but whether those efforts failed. See T.B. v. Cullman Cty. Dep't of Human Res., 6 So. 3d 1196, 1199 (Ala. Civ. App. 2008). Rehabilitation efforts succeed when those circumstances that led to the removal of the child have been resolved, id., so that the child can safely be returned to his or her parent's custody. See Ala. Code 1975, § 12-15-301 (12) (defining "reasonable efforts" as including "[e]fforts made ... to make it possible for a child to return safely to his or her home"). Conversely, if DHR has proven by clear and convincing evidence that the parent remains unable to adequately care for the child after reasonable efforts have been expended to rehabilitate the parent, the juvenile court may find that those reasonable efforts have failed. T.B., supra.

In this case, the evidence in the record indicates that DHR had not yet completed the rehabilitation process at the time of the trial. Nevertheless, the mother had adjusted her

circumstances to alleviate the conditions that had led to the removal of the child. The house from which the child was removed was no longer in the "deplorable" condition that existed in 2015. Jernigan testified that the house was suitable for the child. DHR did not present any evidence suggesting that the mother lacks the mental or physical ability to maintain the house in a suitable condition. To the contrary, Jernigan testified that the mother had made considerable progress by the time of the trial. The record does not contain clear and convincing evidence indicating that the mother remained unable to properly care for the child.

"[T]he existence of evidence of current conditions or conduct relating to a parent's inability or unwillingness to care for his or her children is implicit in the requirement that termination of parental rights be based on clear and convincing evidence." D.O. v. Calhoun Cty. Dep't of Human Res., 859 So. 2d 439, 444 (Ala. Civ. App. 2003).

> "Although a juvenile court certainly can consider a parent's past child-rearing history, see Ex parte State Dep't of Human Res., 624 So. 2d 589, 593 (Ala. 1993), legislative policy, see M.G.[v. Etowah Cty. Dep't of Human Res.], 26 So. 3d [436,] 442 [(Ala. Civ. App. 2009)], as well as constitutional due-process concerns, see Santosky v. Kramer, 455 U.S. 745, 754, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982),

> require that a parent's parental rights be terminated based on clear and convincing evidence of that parent's present inability or unwillingness to care for the children that is likely to persist in the foreseeable future."

S.U. v. Madison Cty. Dep't of Human Res., 91 So. 3d at 723. The conditions at the time of the trial showed that the child could safely be returned home.

A juvenile court can terminate parental rights in situations in which it is convinced that a parent has only temporarily corrected a recurring condition that threatens the welfare of the child. See J.W.M. v. Cleburne Cty. Dep't of Human Res., 980 So. 2d 432, 438-39 (Ala. Civ. App. 2007) (plurality opinion). Although the juvenile court expressed concerns about the number of times the child had been removed from the custody of the mother, "in each instance, DHR'S decision to remove the child from the mother's custody appears to have been taken as a precautionary measure and not as a result of actual threats or allegations of abuse or neglect of the child." C.P.M. v. Shelby Cty. Dep't of Human Res., 185 So. 3d 461, 466 (Ala. Civ. App. 2015). The undisputed evidence in the record shows that the child has never been harmed by the mother. Despite her poor housekeeping skills, the mother had always safeguarded the child from the squalor

around her. Reyes specifically testified that the child was in good physical condition and was clean when taken into DHR's custody in 2015. DHR did not present any admissible evidence to contradict the testimony of the mother that the child has always been healthy and well-groomed despite her otherwise poor living conditions. See In re Paul E., 39 Cal. App. 4th at 1005 n.8, 46 Cal. Rptr. at 294 n.8 (pointing out that "[t]he absence of ill effects is a way of distinguishing a loving-but-dirty-home case from a case of real neglect).

To be sure, a child should not be subjected to living in unsanitary conditions, but the termination of a loving relationship between a child and his or her parent should occur only in the most egregious of circumstances. Ex parte Beasley, 564 So. 2d 950 (Ala. 1990). The evidence shows that the child has thrived under the care of the mother, having bonded with her maternal grandmother, making good grades, and celebrating milestones. The child, who is now 10 years old, shares an emotional and loving relationship with the mother. Jernigan even testified that DHR had scheduled counseling to prepare the child for the possibility that the juvenile court would terminate the mother's parental rights. A parent should

not lose his or her fundamental right to the custody of his or her child, and a child should not be forced to undergo the anguish of losing his or her parent and extended family, just because the parent is not a model homemaker. Santosky v. Kramer, 455 U.S. 745 (1982). In these circumstances, it is hard to see how termination of the mother's parental rights would serve the best interests of the child. Therefore, we conclude that the juvenile court erred in terminating the parental rights of the mother. We therefore reverse the juvenile court's judgment and remand the cause for the entry of a judgment consistent with this opinion. In light of our disposition of this issue, we pretermit the remaining issues raised by the mother.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Pittman and Donaldson, JJ., concur.

Thompson, P.J., dissents, with writing, which Thomas, J., joins.

THOMPSON, Presiding Judge, dissenting.

I would affirm the judgment entered by the Mobile Juvenile Court ("the juvenile court") that terminated the parental rights of H.B. ("the mother"). Therefore, I dissent.

The record indicates that the mother has a history of mental illness and that she was diagnosed at age 22 with psychosis schizophrenia. The mother was 37 years old at the time of the termination hearing, and the child was 9 years old. The mother is disabled as a result of her mental illness. She has resided for all of her life with her mother ("the maternal grandmother"). The mother testified that, except for the period during which she was pregnant with the child, she has taken Haldol to treat her mental illness; the mother insisted that she has always consistently taken that medication. I note, however, that other evidence in the record, discussed infra, indicates that there were periods in which the mother was not consistently taking the medications prescribed to treat her mental illness. The mother also testified that, since she was first diagnosed with her mental illness, she has sought treatment from an office or facility known as "Altapointe." The mother explained that she sees a

counselor or psychiatrist once a year and that she goes to Altapointe for appointments concerning her medication every 90 days.

In August 2008, the Mobile County Department of Human Resources ("DHR") became involved with the mother. Natasha Dysert, a DHR social worker, testified that DHR was called because the mother was engaging in erratic behavior in the parking lot of the apartment complex in which she lived. Dysert stated that the mother was having a "mental-health crisis," and she explained that the mother had informed DHR social workers that she had been shot in the head and that people were trying to run her over with a car. Dysert testified that drug paraphernalia was found in the mother's apartment. The child, who was then 18 months old, was found alone in the apartment in a high chair. Dysert testified that the mother was transferred to a hospital by ambulance and that she was not taking her medications for her mental-health condition at that time.

The mother disputed that she was acting erratically during that incident in 2008. The mother testified that she could not remember the exact details, but that she was either

on her porch or in the apartment when DHR personnel, accompanied by law-enforcement officers, came and removed the child from her custody. The mother stated at the termination hearing that she did not know why DHR had removed the child from her custody in 2008, and she also testified that she believed that a disagreement with her neighbors was the reason for DHR's intervention at that time. DHR offered the mother services that included a psychological evaluation, parenting classes, and drug-screen tests. Custody of the child was returned to the mother in May 2010.

In 2012, DHR again took the child into protective custody after its social workers investigated a complaint from police concerning the condition of the mother and the maternal grandmother's apartment. At that time, the mother, the maternal grandmother, and the child resided in a one-bedroom apartment. Charlene Clemons, a DHR social worker, testified that the mother had 45 cats living in the apartment; the mother believed that there were 30 cats and a dog in the apartment at that time.[3] Clemons testified that the apartment

[3]Several witnesses testified regarding the animals in the mother's apartment. Clemons said there were 45 cats, and the mother said there were 30 cats. The maternal grandmother

was unfit for the child; she explained that the mother's apartment was dirty and that animal feces were all over the apartment. Clemons testified that she did not believe that the mother was taking her medications for the mental illness. DHR offered the mother, among other things, services "to get a psychological, to go to AltaPointe, and get back on her meds." The mother testified that animal control had removed all of the animals and that she had not had a pet since 2012. The child was returned to the mother's custody in December 2013.

The record indicates that in June 2015 DHR received a report that the mother's rental house had no working utilities and was unclean. Natasha Reyes, another DHR social worker, testified that she visited the mother's home during that time and that the child appeared to be in good physical condition. Reyes testified that the child usually appeared clean but that she had seen the child two or three times when she was not clean.

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testified that 28 cats were listed on a piece of paper provided to her at the time by animal-control officials.

In late August 2015, the mother was arrested on a theft-of-property warrant. When law-enforcement officers arrested the mother, they contacted DHR because, according to Reyes, they found the house in "deplorable" condition. Reyes testified that the house was dirty and contained piles of trash, that there were numerous bugs in the house, and that the house had no operational utilities. The mother and the maternal grandmother admitted that they had lost water and power service to the house eight months earlier when the maternal grandmother had lost her employment, but they each testified that the child had been fed and kept clean and that she had attended school each day.

The mother testified that the child was allergic to dust and that a doctor had diagnosed the child, who had symptoms of coughing and shortness of breath, with asthma; a question was raised about whether the mother's smoking cigarettes in the home aggravated that condition. The mother testified that she took the child for a second opinion, and she stated she was told that the child did not have asthma but that the child should be checked again as she grew older.

In offering the mother reunification services in 2015, DHR asked the mother to complete another psychological evaluation; Reyes explained that that evaluation was to determine if the mother was experiencing another mental-illness incident and whether she needed treatment. DHR also offered the mother in-home services through "FOCUS," as well as parenting classes. Reyes testified that the mother did not take advantage of those services during the time she worked on the case. Reyes testified that the case was transferred to another worker immediately following a January 19, 2016, Individualized Service Plan ("ISP") meeting. Reyes testified that although the mother went to DHR's offices for that ISP meeting, the mother refused to go upstairs to an office to take part in the meeting because her attorney, although invited to the meeting, had not shown up to attend the meeting. During that January 19, 2016, ISP meeting, the permanency plan for the child was changed from "return to parent" to "adoption." Reyes testified that she showed the January 19, 2016, ISP to the mother, and it is undisputed that the mother signed that ISP document.

Sarah Jernigan, the DHR social worker assigned to the child's case on March 8, 2016, testified that in the time between Reyes's leaving the case and Jernigan's being assigned to it, Jernigan's supervisor had managed the child's case. Jernigan testified that when she was first assigned to the case, she had difficulty communicating with the mother because the mother did not return her telephone calls. However, at some point, the mother indicated her willingness to accept reunification services, and in May 2016 the mother submitted to the recommended psychological evaluation. By the time of the termination hearing, DHR had provided in-home parenting classes to the mother, who had taken part in one of those classes. Jernigan also asked the mother to submit to a hair-follicle drug test in the week before the termination hearing, but the mother had not gone to the appointment at the testing facility because, she said, she was ill. Jernigan testified that, although her job as a social worker in this case was to provide adoptive services for the child, she had worked with the mother to provide the reunification services even though the mother had rejected those services for the first nine months that the child was in foster care after her removal

from the home in 2015. Jernigan stated that, at the time of the August 1, 2016, termination hearing, the mother was making progress toward the reunification goals.

Jernigan testified that, shortly before the termination hearing, the mother had progressed sufficiently to allow a one-hour visit with the child to occur in the mother's house. That visit occurred on July 19, 2016, and was supervised by the in-home services provider; Jernigan stated that the in-home visit had gone well. However, the mother had not had additional in-home visits with the child, apparently because the termination hearing occurred so soon after that first in-home visit.

Veronica Davis, the psychologist who performed the mother's psychological examination, testified before the juvenile court and submitted her report into evidence. However, the juvenile court stated during the hearing that it would not consider Davis's report because Davis had referred to tests and evaluations performed during the examination but had not included the results of those tests and evaluations in

her report.[4] The majority opinion states that, in explaining comments in her report that was later excluded from evidence by the juvenile court, Davis stated that "the mother was 'stabilized' at the meeting [she and Davis] had had on May 18, 2016." ___ So. 3d at ___. I question whether this court should rely on Davis's testimony because it was largely based upon the report that the juvenile court stated it would not consider or afford any weight. However, I point out that Davis explained that she had concerns about the mother's stability because Davis had not been provided any information about the mother's treatment at Altapointe and because the mother had missed, but had failed to reschedule, a recent, May

[4]In explaining its reasons for not considering Davis's report, the juvenile court stated:

> "THE COURT: ... But I'm going to tell you right now, I'm going to give [Davis's report] no weight whatsoever. I don't consider her to have done anything other than get the mother to report something and spit it back. She didn't make any kind of an expert evaluation or--whether or not she's qualified to do a psychological evaluation, I don't even know. But she didn't do one, and the report she's given does not include anything about the test instruments she used. She explains to have used three different tools, and there's nothing in here about what the tools said. I mean, I've never seen a psychological report that is like this, so I'm giving it no weight."

2016, appointment at Altapointe and that Davis qualified her statement that the mother was "stabilized" by explaining that the mother "appeared to be stable in that moment in time" and that she was "stabilized in that session."

The mother challenges the evidence supporting the termination judgment. Specifically, the mother argues that the evidence does not support a determination that DHR made reasonable efforts to reunite the mother with the child.

> "Whether DHR has made reasonable efforts to reunite a parent and a child is a fact-dependent inquiry. J.B. v. Jefferson Cnty. Dep't of Human Res., 869 So. 2d 475, 482 (Ala. Civ. App. 2003). '[T]he efforts actually required by DHR in each case, whether the court is considering rehabilitation or reunification, depend on the particular facts of that case, the statutory obligations regarding family reunification, and the best interests of the child.' J.B., 869 So. 2d at 482."

A.M.F. v. Tuscaloosa Cty. Dep't of Human Res., 75 So. 3d 1206, 1210 (Ala. Civ. App. 2011).

DHR has removed the child from the mother's custody on three occasions. In B.J.K.A. v. Cleburne County Department of Human Resources, 28 So. 3d 765 (Ala. Civ. App. 2009), a mother had lost custody of her children to the Cleburne County DHR for a third time, and the Cleburne County DHR did not make any further attempt to provide reunification services. The

juvenile court in that case entered a judgment terminating the parental rights of the mother in that case, and this court affirmed, concluding that the Cleburne County DHR had complied with the requirements of Alabama law in providing its earlier attempts at reunification.

> "We reject [the mother's] characterization of DHR's failure to resume efforts at rehabilitation that have proven futile as a failure to fulfill its statutory duty to make reasonable efforts to rehabilitate her and to reunify her family. As we have said before:
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> > "'Based on these circumstances, the juvenile court reasonably could have concluded that an adequate amount of time and effort had been expended in an attempt to rehabilitate the mother but that further time and effort would not help achieve the goal of family reunification in light of the mother's lack of progress over a [five]-year period. We note that the law speaks in terms of "reasonable" efforts, not unlimited or even maximal efforts. In this case, DHR used reasonable efforts to rehabilitate the mother, and the juvenile court did not err in concluding that it would be unreasonable to prolong those efforts.'
> >
> > "M.A.J. [v. S.F.], 994 So. 2d [280,] 292 [(Ala. Civ. App. 2008)]."

B.J.K.A. v. Cleburne Cty. Dep't of Human Res., 28 So. 3d at 771-72.

I believe that in this case, as in B.J.K.A., supra, the juvenile court could have reasonably concluded that DHR made reasonable efforts toward reuniting the mother and the child. In 2015, during the third time that the child was removed from the mother's custody, the mother made no efforts to accept DHR's offered reunification services until the child had been in foster care for nine months. The mother was informed in January 2016 that the permanency plan for the child had changed, and DHR filed its termination petition in February 2016. However, the mother did not begin to cooperate with reunification services until May 2016. I note that the record indicates that the child was transferred to live with a potential adoptive resource in May 2016.

I further note that the mother had begun to take part in reunification services at the time of the termination hearing, but had not completed those services.[5] The fact that the mother's participation in the earlier reunification process did not enable her to maintain custody of her child, together

[5]The mother testified that the in-home services provider had visited her home once and that, although she had completed the parenting classes, DHR or the in-home services provider "need[s] to watch to see if I am utilizing the--the tools that they've taught me."

with the mother's failure to cooperate with DHR's services for so long in this case, supports the conclusion that the juvenile court properly determined that DHR had provided appropriate reunification services and that further services would not have been successful in preventing the termination of the mother's parental rights. B.J.K.A., supra.

Also, there was evidence from which the juvenile court could reasonably question the mother's credibility. The mother testified that the child slept in a room away from the multitude of cats in her small apartment in 2012 and that she no longer had any pets after that incident. However, the juvenile court was not required to believe that the child was not affected by the filth in the apartment that caused DHR to remove her from the mother's custody. Further, Reyes testified that there was cat urine and feces in the family's rental house, and that that house was in an unsanitary condition, in 2015; that evidence indicates that the mother's testimony that she no longer had animals was not truthful. The mother testified that, with the exception of the period in which she was pregnant with the child, she had consistently taken her mental-health medications. However, that claim is

also questionable given the evidence regarding the mother's behavior in 2008 and Clemons's testimony that, in 2012, she did not believe that the mother was taking her prescribed medications.

> "The juvenile court was in the best position to observe the witnesses while they testified and to evaluate their demeanor and credibility. Hall v. Mazzone, 486 So. 2d 408, 410 (Ala. 1986). 'Moreover, "[b]ecause the trial court has the advantage of observing the witnesses' demeanor and has a superior opportunity to assess their credibility, [an appellate court] cannot alter the trial court's judgment unless it is so unsupported by the evidence as to be clearly and palpably wrong."' Ex parte Fann, 810 So. 2d [631,] 636 [(Ala. 2001)] (quoting Ex parte D.W.W., 717 So. 2d 793, 795 (Ala. 1998))."

D.M. v. Walker Cty. Dep't of Human Res., 919 So. 2d 1197, 1214 (Ala. Civ. App. 2005).

The juvenile court, which received ore tenus evidence and had the advantage of observing the demeanor of the mother and the other witnesses as they testified, could reasonably have determined that the mother's attempts to comply with the reunification goals were "'late, incomplete and, therefore, unconvincing[] measures taken only in anticipation of the termination-of-parental-rights hearing.'" A.M.F., 75 So. 3d

at 1212 (quoting J.D. v. Cherokee Cty. Dep't of Human Res., 858 So. 2d 274, 277 (Ala. Civ. App. 2003)).

The majority opinion concludes that the evidence does not indicate that the child suffered harm from the mother's conduct. I note, first, that there is no statutory requirement that, in a termination-of-parental-rights case, DHR prove that a parent's conduct has harmed a child, and I question whether the majority opinion might be interpreted in the future as adding an additional requirement of demonstrable harm that is different from the factors set forth by our legislature in § 12-15-319, Ala. Code 1975, for a juvenile court to consider in an action involving the termination of parental rights. I note that this court has reviewed cases in which a child has been removed from a parent's custody because of issues such as a parent's drug use and that we have not required DHR or a juvenile court to wait to intervene until harm to a child has occurred or been demonstrated. DHR and the courts may, and have a duty to, seek to protect children from the serious potential for harm and to act to protect the best interests of children; I believe that, in most

circumstances, DHR and the courts may act to prevent harm to a child.

I further note that I disagree with the conclusion that there has been no harm demonstrated in this case. At the time the child in this case was taken into foster care for the third time in August 2015, the child was 8 years old and had already spent a total of 40 months, or more than 3 years of her life, in foster care. At the time of August 1, 2016, termination hearing, the child was 9 years old and had spent 52 months, or more than 4 years (i.e., almost half her life) in foster care. The evidence supports a conclusion that, in 2008, the mother's erratic behavior left her unable to properly supervise the young child. The maternal grandmother, with whom the mother and the child resided, had not intervened to protect the child from the filth found repeatedly in the family's home environment. In spite of the mother's testimony that the family no longer had animals after the child had been removed from her custody in 2012, cat feces were listed as a part of the detritus that rendered the mother's house unsanitary in 2015, when the child was again taken into protective custody.

Given the facts, the applicable caselaw, and the presumption in favor of the juvenile court's judgment afforded after the juvenile court has had the advantage of receiving ore tenus evidence, I cannot agree with the majority that the mother has demonstrated that the juvenile court erred in determining that DHR had made reasonable efforts toward reunification.

The mother has not argued on appeal that the juvenile court erred in determining that there were no viable alternatives to the termination of her parental rights; accordingly, any such argument is waived. Ex parte Riley, 464 So. 2d 92 (Ala. 1985). I note that the only relative identified as a possible relative resource by the mother or DHR was the maternal grandmother, with whom the mother and child have lived on all three occasions when the child was removed from the mother's custody.

I further conclude that the mother has failed to demonstrate error with regard to the other issues raised in her appeal. I would affirm the judgment of the juvenile court. Accordingly, I dissent.

Thomas, J., concurs.